IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 515 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RU SHAH

Versus

CHORISI TALUKA DUDH VECHAN KARNARI

Appearance:

1. Criminal Appeal No. 515 of 1989

MR GOPESH SONI for MR KI SHAH for Petitioner No. 1

NOTICE SERVED for Petitioner No. 1

MR MB GOHIL for MR CJ VIN for Respondent No. 1

NOTICE SERVED for Respondent No. 1,2-3

MR MA BUKHARI A.P.P. for Respondent No. 4

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 20/07/2001

ORAL JUDGEMENT

1. Food Inspector, Surat Municipal Corporation has preferred this appeal against judgment and order recorded by J.M.F.C. (Municipal) Surat, in P.F.A. Case No.68/93 rendered on January 8, 1988 acquitting present respondent of charges for offence punishable under Section 7 and 16 of Prevention of Food Adulteration Act.

2. The facts of the case in brief are as under :-

2.1 That the Food Inspector of Surat Nagar Palika i.e. present appellant took sample of milk from the cans containing milk belonging to Choryasi Taluka Dudh Vechan Karnari Sahkari Mandli Ltd. on September 17, 1983 at about 6.30 a.m. in presence of panch witness. The samples were taken after following the procedure as required under the Act and the Rules. The sample was sent to the Public Analyst for analysis. On receipt of the report of the Public Analyst it was found that the sample did not conform to the standards. The analysis indicated that the fat was 5.2%, solids not fat was 8.1% and according to the Public Analyst the solids not fat were lower than the standard prescribed as well as fat also was lower than the standard prescribed. The Public Analyst opined that the sample was adultered with water to the extent of 10% and the deficient in fat was to the extent of 3.7%. Requisite consent as required under Section 20 of the Food Adulteration Act was obtained from Local Health Authority and thereafter, the complaint was filed in the Court of J.M.F.C. (Municipal) Surat. After considering the evidence the learned J.M.F.C. came to a conclusion that the prosecution had failed to prove the charges levelled against the accused persons and therefore recorded the order of acquittal. Aggrieved by the said judgment and order the present appeal is preferred.

3. Learned advocate Shri Gopesh Soni appearing for Mr.K.I. Shah for the appellant has raised number of contentions. He has also taken this Court through the records and proceedings as well as judgment impugned herein. He submitted that the Trial Court has recorded the acquittal mainly on three grounds; first being that there is delay in sending report beyond the requisite period of 40 days; second being that the documents have been produced after a period of about three years; and the third being that the consent does not indicate the reasons. It is submitted that non-mentioning of reasons would not indicate lack of application of mind. He placed reliance on the decision in the case of State of

Gujarat v. Haiderali Rasulbhai Momin reported in 2000 (1) G.L.R. 572.

3.1. Mr.Soni contended further that even if the second ground about the delay in sending the sample is considered there is no delay because the report of the Public Analyst was sent on 38th day and therefore the reasoning adopted by the Trial Magistrate is erroneous. He submitted that such provision is not mandatory unless it is shown that prejudice is caused because of change in the Constituents of the sample. The delay in sending the sample is unexplained. He relied on the decision of State of Gujarat v. Bhagchand Sadhumal and another reported in 1999 (3) G.L.R. 2221. Mr.Soni submitted further that so far as late production of documents are concerned no prejudice is shown by the accused, because of late production. The documents which are produced are very much in existence and they have been produced late on record, but that has not caused any prejudice. In any case, it is not required in law that all the documents must necessarily be produced with the complaint and late production before us would result into prejudice to the accused. Mr.Soni therefore urged that all these three aspects have been erroneously considered by the Trial Court, hence the appeal may be allowed.

4. Mr.Gohil learned advocate for respondents submitted that so far as the contention regarding the consent for prosecution is given without application of mind is concerned, apart from non-mentionning of reasons there are other aspects which would indicate non-application of mind. Mr.Gohil further submitted that production of documents alongwith complaint is not prescribed in any law but for fair trial they are required to be produced alongwith complaint so that the accused would know what is the evidence against him, that he will have to meet with. If the documents are thrust at the last minute he would not be able to defend himself. Mr.Gohil submitted that the sanction is based on report of the Public Analyst. If the report is perused it indicates that there was Adulteration of water to the extent of 10% and the deficient in fat is to the extent of 3.7%. He submitted that according to this very report the fat was found to be 5.2% and solids not fat were found to be 8.1%. He has drawn attention to the provision of Prevention of Food Adulteration Rules, 1955 particularly Clause A.11.01.11 of appendix 'B' which prescribes the minimum standards in respect of buffalo milk. For the State of Gujarat the milk fat is 6% and milk solids not fat is 9%. Mr. Gohil therefore submitted that the opinion given by the Public Analyst

that deficiency in fat is 3.7% is not correct because the difference between required standard of 6% of fat and found 5.2% of fat is not 3.7% and the difference between prescribed 9% milk solids non fat and found solids non fat 8.1% is also not 3.7%. He therefore submitted that the Public Health Authority ought to have taken into consideration this error in the Public Analyst Report and that having not been considered the Local Health authority had failed to apply mind and therefore the consent under Section 20 would be vitiated.

5. To meet with this contention, Mr.Soni has drawn attention of this Court to the deposition of Public Analyst at Exh.46 Jyoti Krishnakant Kandoi who has deposed as to how the test were performed. In cross examination he has stated that the sample in question solids not fat should have been 9% and fat should have been 6%. She admits that as per Exh.21 the deficit of fat was 0.8%. She further denies that her calculation in the report indicating deficiency of 3.7% is incorrect. She gives formula of calculating the deficit. She says that for finding out the fat and solids not fat deficiency she had adopted the following equation. 9-8.1x100/9 was the equation for solids not fat and 6-5.2x100/6 was the equation for finding out the deficit in fat. He therefore submitted that if the formula is applied the results would be the same as indicated in the report and therefore there is no non application of mind on part of the local Health authority. There is no error committed by the Public Analyst and the contention therefore may not be accepted.

6. Having given a thoughtful consideration to the contention raised before this Court it has to be noted that the Public analyst report shows that there was deficiency in fat to the extent of 3.7% which has not found, any support from the theory or formula propounded by the Public analyst in her deposition. She was not able to explain as to how she arrived at the calculation of deficiency in fat to the extent of 3.7%, when admittedly required fat in milk is 6% and the fat found in the milk was 5.2% and admittedly the solids not fat which was found 8.1% as against required lowest standard of 9%. This clearly indicates that the report is erroneous. The Public Authority has not considered this aspect and therefore it can be said that the consent given under Section 20 is without application of mind, in the facts of the present case. If the consent is found to be vitiated on account of non application of mind, the Court could not have recorded the conviction.

7. Looking to the above defect, I do not propose to enter into the other contentions raised by the appellant In light of the above defect in the report of the Public Analyst, and the consent under Section 20, findings on the other points are not pressed for by the appellant. The conclusion arrived at by the learned Magistrate regarding acquittal cannot therefore be said to be erroneous. This Court finds no reasons to interfere with the order of acquittal in this appeal as no palpable error of law or fact is indicated. The appeal therefore must fail and is dismissed.

(A.L. DAVE, J.)

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